

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SHETIA DIXON,

Plaintiff,

v.

WAL-MART STORES EAST, LP,

Defendant.

NOTICE OF REMOVAL

Index №.

PLEASE TAKE NOTICE that defendant Wal-Mart Stores East, LP, (hereinafter “Removing Defendant”), by its attorneys, Bennett Schechter Arcuri & Will LLP, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, files this Notice of Removal of the action styled *Shetia Dixon, Plaintiff, versus Wal-Mart Stores East, LP, Defendant*, Index №. 814310/2020 (the “Action”), from the Supreme Court of the State of New York, County of Erie, to the United States District Court for the Western District of New York.

In support thereof, Removing Defendant states:

1. On or about November 10, 2020, Plaintiff Shetia Dixon (hereinafter, “Plaintiff”) commenced the Action by filing a Summons and Complaint in the Supreme Court of the State of New York, County of Erie, against Removing Defendant Wal-Mart Stores East, LP. A copy of the Summons and Complaint is attached hereto and incorporated herein by reference as **Exhibit A**.

2. On January 21, 2021, the Removing Defendant Wal-Mart Stores East, LP, appeared in the Action by serving its Answer, a copy of which is attached hereto and incorporated herein by reference as **Exhibit B**.

3. On May 17, 2021, Removing Defendant received Plaintiff’s Response to

Combined Demands of the Defendant, dated May 11, 2021, which included a Supplemental Demand for Relief seeking Five Hundred Thousand Dollars (\$500,000.00) in damages in this action, a copy of which is attached as **Exhibit C**.

4. According to Plaintiff's Complaint, Plaintiff Shetia Dixon is an individual domiciled in the State of New York and, therefore, for the purposes of this Notice of Removal, is a citizen of the State of New York. *See* Ex. A.

5. Removing Defendant Wal-Mart Stores East, LP is a limited partnership organized under the laws of the State of Delaware. The only partners of Wal-Mart Stores East, LP are general partner WSE Management, LLC and limited partner WSE Investment, LLC, both of which are limited liability companies organized under the laws of the State of Delaware. The sole member of both WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC, a limited liability company organized under the laws of the State of Arkansas. The sole member of Wal-Mart Stores East, LLC is Walmart Inc., a corporation organized under the laws of the State of Delaware, with a principal place of business in the State of Arkansas. The principal place of business for all of the foregoing entities (Wal-Mart Stores East, LP; WSE Management, LLC; WSE Investment, LLC; Wal-Mart Stores East, LLC; and Walmart Inc.) is in the State of Arkansas. Accordingly, for the purposes of this Notice of Removal, Defendant Wal-Mart Stores East, LP is a citizen of the States of Delaware and Arkansas.

6. This Court has original subject matter jurisdiction over the Action pursuant to 28 U.S.C. §§1332(a) and 1441(b), because (a) there is complete diversity of citizenship among the parties; (b) the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs; and (c) none of the parties in interest who are properly joined and served as Defendants are citizens of New York State. The Action may, therefore, be

removed pursuant to 28 U.S.C. § 1441(b).

7. This Notice of Removal is timely under 28 U.S.C. § 1446(b)(3) and (c), because it is filed within thirty (30) days after receipt by the Removing Defendant of Plaintiff's Supplemental Demand for Relief (the other paper from which it was first ascertainable that the case is removable), and within one (1) year of commencement of the Action.

8. Pursuant to 28 U.S.C. §1446(b)(2), all defendants who have been properly joined and served join in and consent to the removal of the Action.

9. Pursuant to 28 U.S.C. §1441(a), removal venue exists in the United States District Court for the Western District of New York because the Supreme Court, Erie County (the Court in which the Action was originally filed) is within the jurisdiction of the Western District of New York.

10. Pursuant to 28 U.S.C. §1446(a), all process, pleadings, and orders served to date upon the Removing Defendant are appended hereto. Pursuant to Local Rule 81(a)(3), an index of all documents filed in the state court action is attached hereto as **Exhibit D**.

11. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal is being served upon the Plaintiff and is being filed with the Clerk of the Supreme Court, Erie County. *See* Notice of Filing of Notice of Removal, with Affidavit of Service, attached hereto as **Exhibit E**.

12. Removing Defendant reserves the right to amend or supplement this Notice of Removal.

WHEREFORE, Removing Defendant requests that the case styled *Shetia Dixon, Plaintiff, versus Wal-Mart Stores East, LP, Defendant*, Supreme Court of the State of New York, County of Erie, Index №. 814310/2020, be removed to this Court, and that this Court take subject

matter jurisdiction over this Action.

Dated: Buffalo, New York
June 9, 2021

Yours, etc.,

/s/ Pauline C. Will

BENNETT SCHECHTER

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